

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

T. ROWE PRICE TAX-FREE HIGH YIELD FUND, INC., SMITH BARNEY INCOME FUNDS/SMITH BARNEY MUNICIPAL HIGH INCOME FUND, DRYDEN NATIONAL MUNICIPALS FUND, INC., LOIS AND JOHN MOORE and ACA FINANCIAL GUARANTY CORPORATION

Plaintiffs,

v.

KAREN M. SUGHRUE, GARRY L. CRAGO, JEAN W. CHILDS, PAULA EDWARDS COCHRAN, G. STEVENS DAVIS, JR., JULIA B. DEMOSS, WILLIAM R. DILL, LESLIE A. FERLAZZO, JOYCE SHAFFER FLEMING, ERIC W. HAYDEN, CATHERINE CHAPIN KOBACKER, ANNE MARCUS, CELESTE REID, RICHARD J. SHEEHAN, JR., JOSEPH SHORT, GREGORY E. THOMAS, SUSAN K. TURBEN, DONALD W. KISZKA and ADVEST, INC.,

Defendants.

Civil Action No. 04-11667 RGS
Consolidated into
Civil Action No. 05-10176-RGS*

PLAINTIFFS MOTION TO STRIKE IN SUPPORT OF THEIR OPPOSITION TO DEFENDANTS MOTIONS TO DISMISS

The The Institutional Bondholders, the Moores The Institutional Bondholders, the Moores and ACA move M.M. Sughrue, M. Sughrue, Exhibit 4 to the Memorandum in Support Of Bradford Defendants Motion M. Sughrue and Paragraph 11 and Paragraph 11 of the and Paragraph 11 of the Bradford Defendants Motion To Dismiss the asas Argument I.A.4 of their memorandum in support as Argument I.A.4 of their memorandum in support of said m

properly before the Court in its consideration of Defendants Motions To Dismiss properly before the Court in its consideration of Defendants Motions To Dismiss thereof, Plaintiffs state as follows:

1. InIn ruling on a motion to dismiss pursuant toIn ruling on a motion to dismiss pursuant to Fed.R.C onlyonly consider the allegationsonly consider the allegations of the complaint, the documentsonly consider the a ofof public record, and other matters of which the court may take judicial notice. Banco SantaBanco San
dede Puerto Rico v. Lopez-Stubbe (Inde Puerto Rico v. Lopez-Stubbe (In rede Puerto Rico v. Lopez-Stubbe (In re
2003).

2. InIn support of their motions to dismiss the BradfordIn support of their motions to dismiss the Bradford of Karen of Karen M. Sughrue and an excerpt from the book Liberal Arts Colleges: Liberal Arts Colleges: Survival
Endangered? by David W. Breneman (Exhibit 4 to the Memorandum by David W. Breneman (Exhibit 4 to Defendants Defendants Motion To Dismiss). These materials are not the type that may be considered motion to dismiss and should be stricken from the record.

3. ParagraphParagraph 11 of the Bradford Defendants Motion to Dismiss tParagraph 11 of ComplaintComplaint and Argument I.A.4 of their memorandumComplaint and Argument I.A.4 of their memorandum the Four Year Statute of Repose.

4. EachEach Each ofEach of theEach of the BradfordEach of the Bradford Each of the andand Secoand Second Standstill and Tolling Agreement to which the Plaintiffs are either signatories or beneficiaries. Copies ofbeneficiaries. Copies of the agreements are attachedbeneficiaries. Copies of the agreements, the Bradford Defendants agreed to waive their rights to enforce statutes of limitation andand statutes ofand statutes of repose against the Plaintiffs in exchange for Plaintiffs dismissal ofand statutes of andand Plaintiffs agreement not to file any lawsuit against the Bradford Defand Plaintiffs agreement not to period of time. In addition, paragraph 1 of each agreement contains the following provision:

Each Potential Defendant hereby agrees and acknowledges that he shall not plead or raise any cause of action or defense during the Tolling Period as part of the Limitations Period with respect to any Claim.

5. Argument I.A.4 violates the Bradford Defendants' agreement not to plead or raise any statute of limitation or statute of repose against the Plaintiff. Specifically, the Bradford Defendants have breached, which is best accomplished by striking the offending argument.

Wherefore, for the reasons set forth above, this Court should strike:

1. the Affidavit of Karen M. Sughrue;
2. Exhibit 4 to the Memorandum in Support Of Bradford Defendants' Motion to Dismiss; and

3. Paragraph 11 and of the Bradford Defendants' Motion To Dismiss the Complaint and Argument I.A.4 of the memorandum in support of said motion.

T.T. ROWE PRICET. ROWE PRICE TAX-FREE HIGHT. ROWE INC.,INC., SMITHINC., SMITH BARNEY INCOMEINC., SMITH BARNEYBARNEY MUNICIPAL HIGH INBARNEY MUNIC DRYDENDRYDEN DRYDEN NADRYDEN NATIONALDRYDE LOISLOIS and JOHN LOIS and JOHN MOORLOIS and JOHN GUARANTY CORPORATION

By their attorneys,

/s/ Michael Tabb

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Dated: May 2, 2005

CERTIFICATE OF CONFERENCE

Pursuant to Local Rule 7.1(a)(2), I, Michael Tabb, counsel for the Plaintiffs, certify that I have conferred with the Bradford Defendants' counsel in good faith to resolve or narrow the issues presented by the Plaintiffs' Motion to Strike in Support of their Opposition to Defendants' Motions to Dismiss.

/s Michael Tabb

Michael Tabb